IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 17322 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SURESHBHAI BHOGILAL PATEL EX- PRESIDENT & 12 - Petitioner(s)

Versus

JOINT REGISTRAR (AUDIT) CO.OPERATIVE SOCIETIES, & 2 - Respondent(s)

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Appearance :
MR BS PATEL for Petitioner(s) : 1 - 13.MRS RANJAN B PATEL for Petitioner(s) : 1 - 13.
NOTICE SERVED BY DS for Respondent(s) : 1 - 3.
MR AJ YAGNIK for Respondent(s) : 2,
MR UMANG OZA, AGP for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 08/02/2007

ORAL JUDGMENT

1. This petition primarily challenges order dated 15.04.2006 made by the Gujarat State Co-operative Tribunal (Annexure-B) whereby Tribunal confirmed the order / report made by the Inquiry Officer, respondent No.1 herein, on 15.04.2003 (Annexure-A). Though the petitioners have also challenged the order dated 15.04.2003 (Annexure-A), in light of the facts on record and the submissions made, this Court has thought it fit to examine the validity and correctness of the order made by the Tribunal.

2. The brief facts necessary for deciding the controversy are that the petitioners were Directors of respondent No.2-Bank. An Audit Report pertaining to financial year 2000-2001 was made the basis and respondent No.1 appointed one Shri R.N.Bramhmbhatt as an Inquiry Officer to conduct the inquiry under Section 93 of the Gujarat Co-operative Societies Act, 1961 (the Act). The Charge-sheet came to be issued on 13.12.2002 wherein three charges were framed. However, the basis for all the three charges was discounting of Letters of Credit (L.C.) by respondent No.2-

Bank which L.C. had been issued by Charotar Nagrik Sahkari Bank Ltd. Vide order dated 15.04.2003, the explanation tendered by the petitioners was not accepted and the petitioners were held liable to recompense under Section 93 of the Act.

3. The petitioners preferred appeal before the Tribunal. Vide impugned order dated 15.04.2006, the Tribunal has dismissed the appeal filed by the petitioners. The principal grievance made by the learned advocate for the petitioners is that no show cause notice or opportunity was granted before initiation of proceedings under Section 93 of the Act; and the Inquiry Officer failed to supply the material which formed the basis for concluding the proceedings against the petitioners under Section 93 of the Act.

4. Learned AGP, Mr.Umang Oza, appearing on behalf of respondent No.1 has submitted that the impugned order of the Tribunal has dealt with all the grounds raised by the petitioners before the Tribunal and in exercise of extra ordinary jurisdiction, in light of the settled legal principles no interference was warranted at the hands of this Court.

According to the learned AGP the findings of the Tribunal are based on appreciation of evidence and in such a case the High Court should not undertake re-appreciation of such evidence.

5. There can be no dispute with the legal propositions canvased by the learned AGP. However, it is equally well settled that in exercise of extra ordinary jurisdiction under Article 226 of the Constitution, the Court is required to take into consideration not the decision of the Tribunal but the decision making process. The Court is not expected to undertake re-appreciation of evidence, but at the same time, if the decision making process has resulted in failure of justice, the Court would be entitled to step-in.

6. As the facts reveal a charge-sheet was issued on 13.12.2002 whereas before that on 29.11.2002, 05.12.2002, 09.12.2002, 11.12.2002 and 13.12.2002 statements of various persons including the Manger Shri Kanaiyalal N. Patel, Chief Accountant Shri Hasmukhbhai C.Patel and other staff members of respondent No.2-Bank were recorded by the Inquiry Officer. There is no mention of the said material in the charge-sheet issued to the petitioners despite the fact that the

Inquiry Officer has relied upon the said material while passing the order on 15.04.2003. The petitioners had in-fact raised the said grievance before the Tribunal. Unfortunately, the Tribunal has in a very cavalier manner brushed aside the contentions regarding non issuance of show cause notice and non supply of material by stating that though the same may be factually correct, such non issuance of Notice and non supply of material would not make any difference to the end result.

7. Once the Tribunal had accepted the grievance made by the petitioners, as a matter of fact, the Tribunal was duty bound to pause, and pose for itself the question, as to what would be legal consequence of such a procedural lapse. Unfortunately, the Tribunal has failed in the said exercise. It is equally well settled that when the Tribunal bases its decision on an irrelevant factor, it is not possible for the higher forum to state as to what extent the mind of the decision making authority is vitiated by consideration of such irrelevant factor. In the present case, the approach itself is against settled principle of law.

8. In the circumstances, without entering into any

discussion on merits of the controversy and without recording any opinion as to merits or demerits of the respective stands, it would suffice if in the interest of justice, the impugned order made by the Tribunal is quashed and set aside and the appeal of the petitioners restored to file.

9. The petition is allowed accordingly to the aforesaid extent. The order dated 15.04.2006 made by the Tribunal is quashed and set aside and the appeal filed by the petitioners stands restored to the file of the Tribunal for recording a fresh decision in accordance with law after giving reasonable opportunity of hearing to both the sides. The petition is allowed accordingly. There shall be no order as to costs.

(D.A.MEHTA, J.)

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